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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOSEPH G. SIMMONS JR,

9 Plaintiff,

10 v.

11 DEBORAH J. WOFFARD, et al.,

12 Defendants.

CASE NO. C11-5999 BHS-JRC

ORDER DECLINING TO ADOPT
REPORT AND
RECOMMENDATION AND
DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
RELIEF

13 This matter comes before the Court on the Report and Recommendation ("R&R")
14 of the Honorable J. Richrad Creatura, United States Magistrate Judge. Dkt. 27. The
15 Court has considered the R&R, Defendants objections (Dkt. 29), and the remaining
16 record and hereby declines to adopt the R&R and denies without prejudice Plaintiff
17 Joseph Simmons' ("Simmons") motion for preliminary relief (Dkt. 23) for the reasons
18 stated herein.

19 On January 12, 2012, Simmons filed a motion for temporary relief and for a
20 preliminary injunction. Dkt. 7. That same day, Judge Creatura issued an order directing
21 service of Simmons' complaint. Dkt. 9. On February 9, 2012, Judge Creatura renoted
22 Simmons' motion for temporary and preliminary relief for consideration on the Court's

1 March 9, 2012 calendar. Dkt. 19. On February 15, 2012, Defendant's attorney filed a
2 notice of appearance. Dkt. 23. On March 19, 2012, Judge Creatura issued the R&R
3 recommending that the Court grant the motion for preliminary injunction. Dkt. 27.

4 The Court may issue a preliminary injunction only on notice to the adverse party.
5 Fed. R. Civ. P. 65(a)(1). If the recipient is not a registered participant in the CM/ECF
6 system, service of the underlying document must be made by the filer in paper form
7 according to the Federal Rules of Civil Procedure. Local Rule CR 5(b).

8 In this case, Simmons has failed to show that Defendants had notice of his motion
9 for preliminary relief before the date of consideration. Defendants were not registered to
10 accept service via the electronic docketing system when either the motion was filed or
11 when the motion was renoted. Thus, Simmons was required to serve a copy of the
12 motion on Defendants according to the Federal Rules of Civil Procedure. Simmons has
13 failed to meet this requirement. Therefore, the Court declines to adopt the R&R and
14 denies Simmons' motion for preliminary relief without prejudice.

15 **IT IS SO ORDERED.**

16 Dated this 16th day of May, 2012.

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19 BENJAMIN H. SETTLE
20 United States District Judge
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